

## **REMARKS**

### ***Claim Amendments***

Upon entry of the foregoing amendment, claims 40-48 and 88-93 are pending in the application. Claims 88-93 have been added. Support for the new claims can be found throughout the specification and in the claims as originally filed, and, in particular, at page 39, lines 8-10, 15-19, and 24-26 and page 40, lines 15-16. Applicants respectfully request entry of the above amendment and submit that the above amendment does not constitute new matter.

### ***Priority***

Applicants have amended the priority statement in the first paragraph of the specification to add a specific reference to U.S. Patent Number 6,699,701. Applicants submit that this amendment does not constitute new matter.

### ***Specification***

Applicants have amended the specification as suggested by the Examiner by replacing any use of a trademark with the appropriate capitalized reference.

### ***Rejections Under 35 U.S.C. §102(b)***

Claims 40-42 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Taylor *et al.* (U.S. patent No. 2,851,006) (“Taylor”).

Applicants respectfully disagree and traverse this rejection.

Taylor is directed to a method of introducing bacteriophages into the magma of an egg for the purpose of increasing the percentage of hatched birds. Taylor discloses the introduction of bacteriophage by either a hypodermic syringe or a pressure chamber where a pressure differential is used pass the bacteriophage through the pores of the egg shell into the magma of the egg. Accordingly, Taylor is limited to methods of introducing bacteriophage into an egg for the purpose of increasing the percentage of hatched birds.

Claims 40-42 relate to methods of poultry processing sanitation comprising applying at least one bacteriophage to fertilized eggs. As such, the claimed methods are directed to a different process having an entirely different purpose than that of Taylor. Accordingly, because Taylor does not teach a method of poultry processing sanitation comprising applying at least one bacteriophage to the exterior surface of eggs, Taylor does not teach each and every limitation of the claimed invention.

In view of the foregoing, Applicants respectfully request withdrawal of the 102(b) rejection over Taylor.

Claims 46-48 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Day *et al.* (U.S. patent No. 4,851,240) (“Day”).

Applicants respectfully disagree and traverse this rejection.

Day is directed to a method of controlling bacterial growth in fermented animal foodstocks, especially silage (preserved forage) for feeding ruminant livestock. Silage is prone to secondary fermentation by spoilage microorganisms such as *Clostridium* and *Listeria* species. Accordingly, Day is directed to controlling bacterial growth (e.g., *Clostridium* and *Listeria* species) in silage for feeding a specific type of livestock — ruminant livestock (e.g., sheep and cows).

Claims 46-48 relate to methods of poultry processing sanitation comprising applying drinking water containing at least one bacteriophage. Water is not a fermented foodstock (nor are other poultry feeds). As such, the claimed methods are directed to a different process having an entirely different purpose than that of Day. Accordingly, because Day does not teach a method of poultry processing sanitation comprising applying drinking water containing at least one bacteriophage, Day does not teach each and every limitation of the claimed invention.

### ***Rejections Under 35 U.S.C. § 103(a)***

Claims 43-45 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Merrill, *et al.* (U.S. Patent No. 5,811,093, hereinafter “Merril”) in view of Taylor.

Applicants respectfully disagree and traverse this rejection.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.

In re Vaeck, 947 F.2d 488 (Fed. Cir. 1991), MPEP §§ 2142, 2143.

The Office Action states that Merrill discloses topically treating animals (e.g., man, domestic pets, livestock, pisciculture, and animals in zoos and aquatic parks). The Office Action further states that it is common knowledge that chickens, including newly hatched chicks, are livestock. The Office Action concedes that Merrill does not disclose the use of a cocktail of phages. The Office Action

asserts that it would have been obvious to combine the teaching of Merrill and Taylor to arrive at the claimed invention. *See* O.A. at page 4.

Applicants respectfully submit that the references alone, or in combination, do not teach each and every element of the claimed invention, and therefore do not render the claimed invention obvious.

Merril is directed to a method of bacteriophage therapy in animals by administering a genetically engineered bacteriophage capable of delaying inactivation by an animal's host defense system. As such, Merrill is limited to a method of treating animals (in general) by administering a specific type of bacteriophage via any standard route of administration for the purpose of prolonging phage viability in the body. Merrill does not teach or suggest a method of poultry processing sanitation and in particular does not teach or suggest applying at least one bacteriophage topically to at least one freshly-hatched bird. The Office Action provides no reason why the skilled person, upon reading the disclosure of Merrill, would select either the particular subject of freshly-hatched chicks or the administrative modality of topical application. However, application of phage to feathers of newly-hatched chicks produces a long term effect that would not occur in, e.g., pisciculture. Lack of motivation to select the elements of the present claims results in failure to establish a *prima facie* case of obviousness.

Taylor does not cure the deficiencies of Merrill. Indeed, Taylor does not teach or suggest a method of poultry processing or the step of applying at least one bacteriophage to at least one freshly-hatched bird.

Accordingly, because the references alone, or in combination, do not teach or suggest methods of poultry processing sanitation comprising applying at least one bacteriophage to at least one freshly-hatched bird, Applicants submit that the Office Action has not established a *prima facie* case of obviousness.

**CONCLUSION**

In view of the foregoing, Applicants respectfully request an indication of allowance of all claims.

Respectfully submitted,

Dated: April 4, 2007

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